IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of Case

Appeal from Order No. 1134 of 2001
(Old No. 1086/1990)

Date of decision:- 27th April, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date:- Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1134 of 2001
(Old No. 1086 of 1990)

State of U.P.,
Through Superintending Engineer,
Tons Civil Construction Circle-1,
Irrigation Department, Dehradun. ……. Appellant

Versus

M/s Patel Engineering Company Ltd.,
Swami Vivekanand Road, Jogeshwari,
(West), Bombay – 400 102. ……..Respondents

Mr. Subhash Upadhyaya, Standing Counsel for the appellant.
Mr. V.K. Kohli, Senior Advocate with Mr. I.P. Kohli, Advocate for the respondent.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. Prafulla C. Pant, J.

Dated: April 27th , 2006

PRAFULLA C. PANT, J.

This appeal, preferred under Section 39 of Arbitration Act, 1940, is directed against the order dated 10.07.1990 passed by learned First Additional Civil Judge (Sr. Division), Dehradun, in Misc. Case No. 154 of 1988, whereby the objections of the appellant were rejected by the said Court against the Award dated 21.07.1988 delivered by the Arbitrators, on reference of the dispute to them.

2. Brief facts of the case are that the respondent is a contractor, who entered into an agreement with the appellant in connection with the construction of 4.8 Kms. long head race tunnel. As per the agreement, respondent Contractor had to do the grouting work. A dispute arose between the parties as to the rate at which payment was to be made to the contractor regarding the work done by him. The respondent wanted payment showing the entire grouting as Pack Grouting work, while the appellant made payment taking the grouting as Pressure Grouting work. The rate of Pressure Grouting work was Rs. 26.96/- (enhanced rate Rs. 33.70/-) per metric ton and the rate of

Pack Grouting work was Rs. 187.70/- (enhanced rate Rs.339.63/-) per metric ton. The work was performed between October, 1980 to March, 1983. On refusal to payment for alleged Pack Grouting work, the respondent Contractor go referred the dispute to Arbitrators as per the agreement between the parties for claim of the unpaid part of the payment. For said reference, Suit No. 49 of 1985 was instituted by the contractor, which was disposed of by the Civil Judge, Dehradun referring the dispute to the two Arbitrators; on nominated by each party. Mr. P.M. Mane, a Consulting Engineer was nominated by the contractor and Mr. P.S. Rastogi, Chief Engineer was nominated as its Arbitrator by the State (appellant). Against Award given by said Arbitrators, the State of U.P., one of the contracting parties, filed objections under Section 30 / 33 of Arbitration Act, 1940 before the Trial Court, which was registered as Misc. Case No. 154 of 1988. After hearing the parties, the objections of the State (appellant) were rejected, aggrieved by which, this appeal has been filed.

3. We heard learned counsel for the parties and perused the record.

4. The two Arbitrators nominated by the parties entered into the arbitration and gave their award in July, 1988. According to the said award, the claims referred were disposed of as under:

	CLAIM	AWARD
1.	Pay an amount of Rs. 62,34,126/- [Rs. 91,37,000/- less Rs. 29,02,874/- already paid] plus escalations as applicable for the work of pack grouting of the manifold tunnels done upto 31.10.1982.	Rs. 55,95,255/-; plus escalations in terms of IVth supplemental deed on periodical values of work executed on these items calculated on the basis of 90% of cement consumed at a rate of Rs. 33.70 per bag of 50 Kg. and equivalent quantity of sand at Rs. 19.65 per bag of 50 Kg. and for 10% of cement consumed at a rate of Rs. 339.63 per M.T. less whatever amount may have been paid against escalations on the value paid for these items.
2.	Payment at the rates [viz. pack grouting at Rs. 33.70 per bag of 50 Kg. cement, sand at Rs. 19.65 per bag of 50 Kg. and	Pay at Rs. 33.70 per bag of 50 Kg. cement and sand at Rs. 19.65 per bag of 50 Kg. for 90% of the quantum consumed after

	drilling grout holes at Rs. 8.80 per meter] for the work executed after 31.10.1982, till completion of the job.	31.10.1982 and 10% cement consumed at Rs. 339.63 per M.T. Claim for drilling grout holes is rejected.
3.	Pendentelite interest @ 18% per annum on the awarded amount.	Pendentelie interest @ 10% per annum on the awarded amount from 10th December, 1982. [the date on which the Claimants requested the Respondents to refer the disputes for Arbitration ad nominated Shri P.M. mane as their Arbitrator] till the date of this Award.
4.	Further interest at 6% per annum on the awarded amount.	Further interest at 6% per annum from the date of this Award till the date of Decree or actual payment whichever is earlier.
5.	Cost of Arbitration proceedings.	Rs. 40,000/- as cost of Arbitration proceedings.
6.	Such other reliefs as deemed to be just and proper.	Nil

5. Learned Standing Counsel on behalf of the appellant argued that the impugned Award is a non-speaking award and as such, is liable to be set aside. However, we are unable to accept the contention of the learned Standing Counsel for the appellant for the reason that under the Arbitration Act, 1940, the award was not required to be a speaking award. In **M/s Continental Construction Ltd. Vs. State of U.P.** reported in **JT 2003 (Suppl. 2) SC 140,** it has been held by the Apex Court that the awards given by the Arbitrators under Arbitration Act of 1940 could not be interfered merely on the ground that the Arbitrators have not disclosed their minds as to the reasons for their conclusions in the award.

6. Similar view has been expressed in **Ispat Engineering & Foundry Works, B.S. City, Bokaro Vs. Steel Authority of India Ltd., B.S. City, Bokaro** reported in **(2001) 6 SCC 347,** wherein it has been held by the Apex Court that where no reasons were given by the Arbitrator to arrive at his conclusion, it is not open to the Court to attempt to assess the mental process by which Arbitrator has reached to his conclusion.

7. In **D.D. Sharma Vs Union of India** reported in **(2003) 5 SCC 325** also, it has been held that the award passed under the then Arbitration Act 1940 cannot be set aside merely for the reason that it was a non-speaking one.

8. The objector / appellant has utterly failed before the Trial Court to prove any misconduct on the part of the Arbitrators on the basis of which, the award can be said to be invalid. We are in agreement with the findings of the lower court on this point. As far as the 6% per annum interest from the date of the award awarded by the Arbitrators is concerned, appellant failed to show any illegality in the same.

9. For the reasons as discussed above, in the opinion of this Court, the appeal is liable to be dismissed. The same is dismissed. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

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